

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1370 OF 2015

MR.AKBAR ALLAUDDIN SHAIKH)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Gaurav Jachak, Advocate for the Applicant.

Mrs.S.Gajare-Dhumal, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 31st AUGUST 2015.

P.C. :

1 Heard Mr.Gaurav Jachak, the learned counsel for the
applicant. Heard Mrs.S.Gajare-Dhumal, the learned APP for the
State.

2 The applicant has been arrested on the allegation of
having committed offences punishable under Section 354 of the
Indian Penal Code (IPC) and Section 376(2)(l) of the IPC. He is

in custody since 6th March 2015. Investigation is over and the charge-sheet has already been filed. The applicant had applied for bail before the court of Sessions, but the learned Additional Sessions Judge, who heard his application, rejected the same. The applicant has now approached this court praying that he be released on bail.

3 I have gone through the application and the annexures thereto, which include a copy of the charge-sheet.

4 Initially, the case was registered only in respect of an offence punishable under Section 354 of the IPC. A few days later i.e. after three days, the accusation of the offence punishable under Section 376(2)(l) of the IPC was added. It appears that the victim, who is aged 31 years, is deaf and dumb. She is a widow, having a daughter of three years. The First Informant, Smt.Sandhya Waghmare, heard the cries of a small girl from the house of the applicant, and therefore, she went there and pushed the door. She noticed that the applicant had been holding the

victim in his arms. The victim, by gestures, indicated that the applicant had *kissed* her. The First Informant and the other women then caught the applicant and brought him to the police station, who, initially was arrested on the allegation of an offence punishable under Section 354 of the IPC, and later on, was also accused of an offence punishable under Section 376(2)(l) of the IPC.

5 There does not seem to be any basis, whatsoever, for leveling the accusation of rape. I have gone through the report of the medical examination of the victim, which indicates that no fresh injuries on the body of the victim were found. As a matter of fact, even the victim's medical examination to ascertain whether she had been raped or not, seems to be quite unjustified, as there was absolutely no basis for holding that an offence of rape had been committed against the victim.

6 The incident had taken place in the house of the applicant. Apparently, the victim had gone to the applicant's

house. In the circumstances, even if it is assumed that what was taking place was against the wish of the victim, still it would amount only to an offence punishable under Section 354 of the IPC.

7 That, there was no case in respect of rape, was recognized by the learned Additional Sessions Judge also, who, in the impugned order observed as follows :

“It is pointed out by learned counsel for accused that there is no evidence of forcible intercourse. However, it would be matter of trial.”

The approach of the learned Additional Sessions Judge was not proper. Undoubtedly, it would be a matter for the trial, but in the meantime, it was not proper to curtail the liberty of the applicant.

8 The learned counsel for the applicant submits before me that if released on bail, the applicant is ready to abide by the condition that he shall not reside in Yerwada area and shall not contact, meet, or approach the victim till the disposal of the case against him.

9 The application is allowed.

10 The applicant is ordered to be released on bail in the sum of Rs.20,000/-, with one surety in like amount, or two sureties in the sum of Rs.10,000/- each, on the following conditions :

- i) the applicant shall not reside within the area of Kamrajnagar, Yerwada, till the disposal of the case against him.
- ii) the applicant shall not contact, meet or approach the victim, in any manner whatsoever, till the disposal of the case against him.

(ABHAY M. THIPSAY, J.)